



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN 36

Exempt Organizations

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services (MRS) regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

The Sales and Use Tax Law provides specific exemptions for a number of different kinds of organizations and institutions, such as hospitals, schools, churches and libraries. **The sales and use tax law does not provide that all entities that qualify as a tax-exempt organization by Internal Revenue Service standards (for purposes of 26 USCA §501(c)(3)) are exempt from the Maine sales and use tax.** There are many legitimate civic, charitable and fraternal organizations in Maine that do **not** qualify for exemption under the law and that consequently must pay sales and use tax on all of their purchases. If no specific Maine sales tax exemption applies to an organization, its purchases are not exempt.

.01 EXEMPTION CERTIFICATE APPLICATION PROCESS

Organizations and institutions that are entitled to sales/use tax exemption under the law may submit an application to MRS for a certificate of exemption. The applicant must provide the information and documents specified on the application form. The requirements for exempt status vary; the specific statutory provision in question must be reviewed in order to determine the criteria that must be met for each type of organization. Therefore, different supporting documents are required to accompany the application form for each specific organization.

The completed application form must be submitted to MRS along with any required supporting documentation. If MRS determines that the organization qualifies for a Maine sales tax exemption, a numbered exemption certificate is issued with the name and address of the organization. The certificate also identifies the exempt activity. When an otherwise qualifying entity is engaged in both exempt and nonexempt activities, the exemption certificate will be issued only if it has been established to the satisfaction of the State Tax Assessor that the applicant has adequate accounting controls in place to limit the use of the certificate to exempt purchases.

If MRS determines that the organization does not qualify, a denial letter is issued. An organization may be asked to submit additional documentation before a determination can be made. A decision by MRS to deny an application for issuance of an exemption certificate constitutes a determination of the State Tax Assessor and is subject to a petition for administration reconsideration pursuant to 36 MRSA §151.

.02 USE OF EXEMPTION CERTIFICATE

The exemption certificate may be used only to purchase items that will be used **exclusively** by the organization and primarily in the activity identified in the statutory exemption for which it qualifies and identified on the face of the certificate. Thus, an exemption certificate may **not** be used:

A. By members or employees of the exempt organization (including clergy) to purchase items for personal use;

B. To purchase items for resale by the organization; or

C. To purchase items for use by the organization in activities that are primarily commercial enterprises.

The law has recently been amended to provide that if the holder of an exemption certificate furnishes that certificate to a person for use in purchasing tangible personal property or taxable services that are physically incorporated in, and become a permanent part of, real property that is **not** used by the holder of the certificate primarily in the exempt activity, **the State Tax Assessor may assess the unpaid tax against the holder of the exemption certificate.**

An exempt organization may not authorize an affiliated organization or contractor to use its exemption certificate (but see Section 4 below for one exception involving contractors).

Sales to organizations that do not hold and provide to the vendor an exemption certificate issued by MRS will be deemed taxable. Misuse of exemption certificates by individuals or organizations may be subject to criminal prosecution.

.03 PURCHASES BY (AND SALES TO) NON-GOVERNMENTAL EXEMPT ORGANIZATIONS

A. Responsibilities of seller; good-faith requirement. Invoices of sales made to exempt organizations must be appropriately marked to indicate that they are exempt sales. The words “Maine Sales Tax Exempt” and the purchaser’s exemption number will satisfy this requirement. The seller must keep a copy of the purchaser’s exemption certificate on file, but does not need to obtain a copy for each subsequent sales transaction. Exemption certificates must be taken by the seller in good faith in order for the sale to be exempt from tax; that is, the seller must know or reasonably believe that the sale is exempt. The good faith of the seller will be questioned if it has knowledge of facts that give rise to a reasonable inference that the purchaser is not the rightful holder of the exemption certificate that has been presented, or that the merchandise is not being purchased for the purpose of using it exclusively by the organization and primarily in the

activity identified in the statutory exemption for which it qualifies and identified on the face of the certificate.

Sales to employees or representatives of exempt organizations paid for by means of cash cannot be sold exempt from tax unless a purchase order in the name of the organization is presented by the person making the purchase. Personal checks or personal credit cards cannot be used when making exempt sales to employees or representatives of exempt organizations. In order to make exempt sales to employees or representatives of exempt organizations the transaction must be paid for by a check in the name of the organization, a credit card in the name of the organization or by purchase order in the name of the organization.

B. Responsibilities of purchaser. An exempt organization should make photocopies of its exemption certificate as soon as it receives it. In order to make a tax-exempt purchase, the organization must complete the bottom part of the exemption certificate and give a completed copy to the vendor from whom it is purchasing. Once a particular vendor has a copy of a completed exemption certificate on file for a qualifying organization, it does not need to obtain a copy of the certificate for each subsequent purchase. (But see Section 4 below regarding the burden of proving that a sale is tax-exempt.)

Tax-exempt purchases made using the exemption certificate must be paid for directly by the exempt organization with a check drawn on the organization's account or a credit card issued in its name. A tax-exempt purchase may also be paid for with cash, personal check or personal credit card, but only if the tendered payment is accompanied by a purchase order in the name of the exempt organization, in which case the purchase order must be kept by the vendor in order to document the exempt sale.

.04 SALES TO (OR PURCHASES BY) CONTRACTORS PERFORMING WORK FOR EXEMPT ORGANIZATIONS

Contractors, including those from outside of Maine, are often employed by tax-exempt organizations to perform work that results in additions to or incorporation into real estate. The Maine Sales and Use Tax Laws that apply to such contractors apply to both resident and non-resident contractors.

A contractor may purchase items exempt from Maine sales tax that will be **incorporated into the real estate** of exempt organizations. A Contractor's Exemption Certificate (STP-72) should be completed by the contractor and supplied to the vendor for these purchases. Whenever possible the Maine Sales Tax Exemption number of the exempt organization should be supplied on the Contractor's Exemption Certificate. An exemption number for governmental agencies need not be supplied, but the name of the governmental agency should be written on the Contractor's Exemption Certificate.

Any other purchases made by the contractor for use on such a job are subject to the Maine sales/use tax. Such purchases include, but are not limited to: consumables; tools; supplies; equipment; equipment rentals; fuel; safety equipment; apparel; and temporary structures. **Any purchases made by the contractor that are not to be incorporated into the real estate owned by the Maine tax-exempt organization are subject to the Maine sales/use tax.**

Out of state contractors that perform contracts in Maine are responsible for any Maine sales/use tax on the cost of any tools, supplies or equipment that are purchased for use on such jobs. If such property is brought into Maine without having any Maine sales/use tax paid, the contractor must register with Maine Revenue Services and report and remit any use taxes due. Any tools and/or equipment that have been previously owned and used by the out of state contractor for more than 12 months outside the State of Maine would not be subject to Maine sales/use tax.

For more information on contractors and subcontractors, including the Contractor's Exemption Certificate, see Information Bulletin No. 4.

.05 VOUCHERS ISSUED BY EXEMPT ORGANIZATIONS

Vouchers are sometimes issued by tax-exempt organizations to needy individuals for such items as groceries, fuel, clothing, and appliances. When such a voucher is redeemed by an individual at a retail location for a taxable product, the sale is to the individual, not to the exempt organization. The vendor must therefore charge, report and remit Maine sales tax when it invoices the exempt organization or bills a governmental agency.

.06 VOUCHERS ISSUED TO INDIVIDUALS

A. Generally. Vouchers are often issued by charitable, exempt organizations to individuals who incur a hardship or disaster of some sort. Vouchers may be issued for such things as groceries, fuel, clothing, appliances, or even an automobile. When vouchers are issued by an exempt organization to an individual for redemption at a retail location for a taxable product, the vendor is required to impose the Maine sales tax when invoicing the exempt organization. Such a sale is considered to be a sale from the retailer to the individual who is actually redeeming the voucher. The Maine tax must be collected, reported and remitted by the vendor for all such taxable sales; including those that are billed to governmental agencies. Sales made by the redemption of such vouchers are separate and distinguishable from sales made directly to the exempt organization.

B. Employees. Occasionally an exempt organization will issue a voucher to its own employee for the purchase of protective or safety equipment or clothing for job-related use. Purchase made by an employee with a voucher of this type must be accompanied by a purchase order from the issuing exempt organization in order to qualify as an exempt purchase by that organization.

.07 SALES TO (OR PURCHASES BY) GOVERNMENTAL AGENCIES

All sales to the federal government, the State of Maine and any county, city, town or municipality in the State of Maine are exempt from the Maine sales/use tax. Entities included in this category include school districts; water, power, parking or other districts established by legislative act as quasi-municipal corporations; village corporations; and the Maine Turnpike Authority.

Sales to other states and their agencies and subdivisions are taxable. Sales to foreign countries may or may not be exempt from Maine sales or use tax depending on the particular country in question, and also possibly depending also on the amount of the purchase price. The same is true for sales to foreign diplomatic personnel. For more information on sales to foreign missions and their personnel, consult the web site maintained by the US Department of State, Office of Foreign Missions, Tax Program at <http://www.state.gov/ofm/tax/> or call Maine Revenue Services.

Governmental agencies are not required to obtain a Maine Sales/Use Tax Exemption number. Sales made to governmental agencies exempt from Maine sales/use tax should be documented by listing the name of the governmental agency on the invoice or sales slip. A sale to a governmental agency cannot be paid for with cash unless it is accompanied by a purchase order in the name of the exempt governmental agency. Exempt sales cannot be paid for by personal check or personal credit card. Exempt sales must be made with a check, credit card or purchase order in the name of the exempt governmental agency.

Although governmental agencies are not required to obtain a Maine Sales/Use Tax Exemption number, Maine Revenue Services will issue such numbers to any agency that requests one. Many governmental agencies request that an exemption number be issued to them for the convenience of their vendors. Also, an agency of state or local government may request an ST-L-128 letter from MRS confirming its exempt status.

.08 SALES TO EMPLOYEES OF STATE OR FEDERAL GOVERNMENT

Certain employees of the State or Federal government agencies are issued specific credit cards which display the name of the employee together with the name of the agency. Sales that are paid for with credit cards that are billed to and paid for directly by the governmental agency are exempt from the Maine sales/use tax.

A. State employees. The State of Maine issues only one official credit card for the use of State employees, with billing directly to the State: a Mastercard issued by J. P. Morgan Chase. This card may be used only to purchase tangible items, and may not be used for meals or lodging. Purchases made by Maine state employees with any other type of credit card are subject to the Maine sales tax.

B. Federal Employees. Certain credit cards issued by the federal government to its employees are direct-billed to the federal government and are therefore exempt from Maine sales tax. However, other federally-issued cards are billed to employees who are later reimbursed, and in such cases the sales are taxable. Several cards currently issued by the U.S. Government are described below. Questions in this area should be directed to Maine Revenue Services.

Fleet card with notation “For Official Government Fleet Use Only.” Purchases are centrally billed and exempt from sales tax

Purchase card with notation “For Official US Government Purchases Only US Government Tax Exempt.” Purchases are centrally billed and exempt from sales tax.

Travel Card with notation “For Official Government Travel Only.”

Purchases with cards which have a 0, 6, 7, 8 or 9 in the sixth digit are exempt; all others are taxable.

Integrated card with notation “For Official Government Use Only”

Fleet and purchase type transactions are exempt; travel purchases are exempt if sixth digit is a 0, 6, 7, 8 or 9.

Facsimiles of these cards may be seen at:

http://www.taxadmin.org/FTA/rate/fed_cards.html

.09 Churches and Houses of Religious Worship

A. Generally; criteria applied. The following criteria are applied by the State Tax Assessor in determining whether a religious organization is a “regularly organized church or house of religious worship” for purposes of the sales/use tax exemption provided by 36 MRSA section 1760, subsection 16. These criteria are not exclusive and are not mechanically applied. No single factor is controlling, and all of the listed criteria may not be relevant to a given determination. Any other facts and circumstances that may bear upon an organization's claim that it is a church or house of religious worship are also to be taken into consideration.

1. A distinct legal existence.
2. A recognized creed and form of worship.
3. A definite and distinct ecclesiastical government.
4. A formal code of doctrine and discipline.
5. A distinct religious history.
6. A membership not associated with any other church or denomination.
7. An organization of ordained ministers.
8. Ordained ministers selected after completing prescribed studies.
9. A literature of its own.
10. Established places of worship.
11. Regular congregations.
12. Regular religious services.
14. Sunday schools for religious instruction of the young.
15. Schools for the preparation of its ministers.

B. Availability to the public. The means by which its religious purposes are accomplished are what separate a church or house of worship from other forms of religious enterprise. To qualify as a church or house of religious worship, an organization must be reasonably available to the public in its conduct of worship, its educational instruction, and its promulgation of doctrine.

.10 ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1065
AUGUSTA, ME 04332-1065
TEL: (207) 624-9693
TTY: NexTalk (888) 577-6690**

Or visit our website at www.maine.gov/revenue

The Department of Administrative and Financial Services does not discriminate on the basis of disability in admission, to access to, or operation of its programs, services or activities.

Re-Issued: October 5, 2007

(Published under Appropriation 010-18F-0002-07)

ATTACHMENT #1

Excerpts taken from the Maine Revised Statutes, Title 36

Most tax-exempt organizations fall within the two statutory exemption provisions reproduced below. Since each type of exempt organization requires a separate statutory provision, they are too numerous to list in this document. Attachment #2, there is a comprehensive listing of all the types of organizations for which there is a sales tax exemption.

36 §1760(2) & (16):

2. Certain governmental entities. Sales to the State or any political subdivision, or to the Federal Government, or to any unincorporated agency or instrumentality of either of them or to any incorporated agency or instrumentality of them wholly owned by them. This exemption does not apply where title is held or taken as security for any financing arrangement. This exemption also does not apply to corporations organized under Title IV, Part E of the Farm Credit Act of 1971, 12 United States Code, Sections 2211 to 2214.

16. Hospitals, research centers, churches and schools. Sales to:

- A. Incorporated hospitals;
- B. Incorporated nonprofit nursing homes licensed by the Department of Health and Human Services;
- C. Incorporated nonprofit residential care facilities licensed by the Department of Health and Human Services;
- D. Incorporated nonprofit assisted housing programs for the elderly licensed by the Department of Health and Human Services;
- E. Incorporated nonprofit home health agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended;
- F. Incorporated nonprofit rural community health centers;
- G. Incorporated nonprofit dental health centers;
- G-1. Incorporated nonprofit medical clinics whose sole mission is to provide free medical care to the indigent or uninsured *[as of 10/1/07]*;
- H. Incorporated nonprofit organizations organized for the sole purpose of conducting medical research;
- I. Incorporated nonprofit organizations organized for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology;
- J. Institutions incorporated as nonprofit corporations for the purpose of operating educational television or radio stations;
- K. Schools;

L. Incorporated nonprofit organizations or their affiliates whose purpose is to provide literacy assistance or free clinical assistance to children with dyslexia; and

M. Regularly organized churches or houses of religious worship.

ATTACHMENT #2

Following is a list of all types of organizations for which there is a sales tax exemption in the law. Following each type of organization is a number that represents the subsection of 36 MRSA §1760 that sets forth the specific criteria for the applicable exemption. To view the specific statutory language, go to:

<http://www.state.me.us/revenue/salesuse/exemptions/exemptions.html> and click on the specific organization.

Medical/Healthcare

Ambulance Services (including certain air ambulance services), 26

Residential Care Facilities, 16

Charitable Suppliers of Medical Equipment, 62

Dental Health Centers, 16

Dyslexia Assistance for Children, 16

Eye Banks, 77

Hearing–Impaired Services Organizations, 70

Home Health Care Agencies, 16

Hospice Organizations, 55

Hospitals, 16

Medical clinics providing free care, 16

Medical Research Institutions, 16

Mental Health and Mental Retardation Facilities, 28

Nursing Homes, 16

Organizations Fulfilling the Wishes of Children with Life-threatening Diseases, 63

Residential Facilities for Medical Patients and Families, 46

Rural Community Health Centers, 16

Educational

Dyslexia Assistance for Children, 16

Educational Television or Radio Stations, 16

Historical Societies & Museums, 42

Libraries, 50

Literary Assistance Organizations, 16

Maine Science and Technology Foundation, 68

Nursery Schools, 43

Providers of Support Systems for Single-Parent Families, 66

Residential Youth Camps Providing Social Education Services, 59

Schools, 16

Scouting Organizations, 56

Governmental

Agencies of Government, 2

Community Action Agencies, 49

Fire Departments, 26

Regional Planning Commissions and Councils of Government, 37

Religious

Churches, 16

Church Affiliated Residential Housing for Adults, 44
Monasteries and Convents, 65

Child-Related Exemptions

Advocate for Children, 49
Child Abuse and Neglect Councils, 49
Day Care Centers, 43
Dyslexia Assistance for Children, 16
Nursery Schools, 43
Organizations Fulfilling the Wishes of Children with Life-threatening Diseases, 63
Residential Child Caring Institutions, 18-A
Residential Facilities for Medical Patients and Families, 46
Residential Youth Camps Providing Social Education Services, 59
Schools, 16
Scouting Organizations, 56

Other Nonprofit Incorporated Agencies

Animal Shelters, 60
Emergency Shelter and Feeding Organizations, 47A
Home Construction Organizations, 67
Veteran's Memorial Cemetery Associations, 51
Vietnam Veteran Registries, 69
Volunteer Search and Rescue Organizations, 53
State & Federal Credit Unions, 71
Nonprofit Housing Development Organizations, 72